IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.29107 of 1998

Dated: 28-03-2007

Between:

V. Madhusudhan Rao, s/o Anjaiah.

... Petitioner

and

1. The Government of Andhra Pradesh,
   rep. by its Principal Secretary, Revenue Department,
   Government of Andhra Pradesh,
   A.P. Secretariat Buildings,
   Hyderabad and 2 others.

... Respondents

ORDER:

Questioning the orders bearing G.O.Ms.No.253 Revenue (UC.III) Department, dated 13-04-1998 and Section 6(1) declaration from third respondent, the present writ petition has been filed seeking to quash the said G.O., and consequently declare that petitioner's land is exempted from the provisions of Chapter III of the Urban Land (Ceiling & Regulation) Act, 1976 (for short, 'the Act').

2. Facts, in brief, are: During 1966 the Andhra Pradesh Industrial Infrastructure Corporation Limited (for short, 'APIIC') had allotted plot Nos.67, 68, 91 and 92 of Block-VII, Unit-B, approximately to an extent of 2000 square yards equivalent to 1672.24 sq. mts. in the Autonagar Industrial Estate of Gunadala village of Vijayawada, to petitioner and the Deputy Estate Engineer, Industrial Estate, Vijayawada had issued proceedings No.3192/66, dated 26-11-1966 allotting the land and handed over possession of the same plots to him. As per Clause No.1 of the said allotment letter, petitioner shall take up the construction of the factory/industrial Unit within three months from the date of the said allotment and possession of the land allotted. According to petitioner, the buildings in the said area exist since nine years prior to the commencement of the Act and he has been in possession of the said buildings from the date of construction, which were constructed with his funds in the area allotted by APIIC. He filed declaration under Section 6(1) of the Act in respect of the plots in question. The Government of Andhra Pradesh issued G.O.Ms.No.259, Rev. UC-III Department, dated 23-02-1982 exempting petitioner's Industrial Unit covering in an area of 1672.24 sq. mts. in plot Nos.67, 68, 91 and 912 in R.S.No.494 and 495 of the Industrial Estate – Auto Nagar, Vijayawada from the provisions of Chapter-III of the Act with certain riders. The first respondent – Government at the instance of third respondent – Special Officer erroneously issued a Memo No.1155/UC-III/87-10, dated 17-03-1994 directing petitioner to explain the present usage of the property stating that petitioner is manufacturing steel folding chairs instead of silencers, which is violation of the earlier orders. The petitioner submitted his explanation 08-06-1994. The Government after careful examination of the matter

and the report of third respondent issued G.O.Ms.No.253 dated 13-04-1998 directing the third respondent to take further course of action under the provisions of the Act to take over the possession of the land in question. Assailing the said G.O., the present writ petition has been filed.

3. In the counter affidavit it is stated that at the time exemption was granted it was specifically stated that the lands should be utilized for the purpose it was retained, failing which the exemption granted shall stand cancelled and the excess land will be subject to the provisions of the Act. It is further stated that as petitioner was originally manufacturing silencers for automobile Units and subsequently he stopped manufacturing silencers and was manufacturing steel chairs deviating from the original business and thus contravened the condition stipulated and hence,
the said cancellation of the exemption is justified.

4. Heard learned counsel for the parties.

5. Sri C. Hanumantha Rao, learned counsel appearing for petitioner, reiterated the contents of the affidavit filed in support of the writ petition and submitted that as petitioner's Unit was facing huge loss it had changed its business from manufacturing silencers to steel chairs. It is his further submission that though the manufacturing process is altered the petitioner is still in the business and in this context learned counsel has drawn my attention to the definition of "industry" stated in Explanation (b) to Section 23 of the Act.

6. The facts are not at all in dispute. In my considered view there was no necessity for the petitioner to seek exemption, having regard to the fact that the land with the buildings in question is located in an

extent of 1672 square meters only whereas for places like Vijayawada, the ceiling limit for vacant land is fixed at 1500 square meters and for those with buildings, appurtenances etc., there is no ceiling limit. In this context, learned counsel has relied upon a judgment in **SMT. MEERA GUPTA V. STATE OF W.B. AND OTHERS**[1] wherein the Apex court has described what a vacant land is.

7. Having regard to the fact that in the instant case it is not a vacant land, but it is a land with appurtenant buildings in my considered view it does not come within the provisions of the Act. However, as there was an application seeking exemption, the competent authority passed an order granting exemption. No doubt, while granting exemption, it specifically observed that the land should be utilized only for the purpose for which it was retained and in the event of failure the said exemption would be cancelled. As rightly contended by the learned counsel what is to be seen is as to whether petitioner has changed the business. From a narration of the events it is clear that petitioner is still carrying on business and he changed the said business from manufacturing of silencers to steel chairs. From the said change it cannot be said that he is using the land for some other purpose other than the one for which exemption is granted. In fact, the word 'industry' is defined in the Explanation (b) of Section 23 of the Act, is any business, profession, trade, undertaking or manufacture. From the above definition also, it is clear that so long as the Unit does not change its business of manufacturing process, it shall be construed as an 'industry' even if there is some alteration. Hence, the orders passed in G.O.Ms.No.253, dated 13-04-1998 by first respondent definitely can be said to be arbitrary and the same are liable to be set aside.

8. In the result, the writ petition is allowed setting aside G.O.Ms.No.253 Revenue (UC.III) Department dated 13-04-1998 issued by first respondent. No costs.

JUSTICE GOPALAKRISHNA TAMADA

Dt.28-03-2007
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[1] AIR 1992 S.C.1567